IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
LAFAYETTE DIVISION

ANDREW O'SHEA, individually and on behalf of all those similarly situated,	)	
Plaintiff,	)	
v.	)	Cause No. 4:16-CV-00015-JD-JEM
MARISOL MARTINEZ, JAMES HARDING and RUBEN HERNANDEZ,	)	Hon. Jon E. DeGuilio
Defendants.	)	

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

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I. INTRODUCTION

Without explaining how he could possibly know how the Human Resources Department at Indiana Packers Corporation ("IPC") processes new hire paperwork, Plaintiff Andrew O'Shea ("Plaintiff") recklessly accuses two of IPC's HR workers, Marisol Martinez and Ruben Hernandez, of committing immigration fraud on "hundreds (and perhaps thousands)" of occasions. First Amended Complaint ("FAC"), ¶¶1, 4. He also speculates that their supervisor, James Harding, approved of such activities. *Id.* Based on these threadbare and conclusory allegations, Plaintiff charges Martinez, Hernandez, and Harding with being racketeers who violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§1961-68 ("RICO") as part of a purported "conspiracy" to "employ vast numbers of illegal immigrants at the plant to depress wages." *Id.*, ¶1.

This is not the first time Plaintiff has made such reckless accusations. His earlier complaint leveled similar charges against two of the Defendants. As those assertions were legally defective for a multitude of reasons, Defendants moved to dismiss. [Dkt. 17-18]. Rather than address the deficiencies head on, Plaintiff instead filed his FAC. [Dkt. 19]. Despite adding a new Defendant and new verbiage, however, the FAC suffers from the same fatal defects as his original complaint. Consequently, this latest iteration is merely another in a long line of unsuccessful civil RICO actions "that have been filed in various federal courts across the nation, [attempting to] capitaliz[e] on the popular outcry against undocumented aliens who are working openly in the United States." *Nichols v. Mahoney*, 608 F.Supp.2d 526, 529 (S.D.N.Y. 2009). While RICO's treble damages and attorney's fees are enticing both to those who want to propagate political views via the court process and extract monetary settlements, judges have properly concluded that the Act is one of **"the most misused statutes in the federal corpus of**

law." *West 79th Street Corp. v. Congregation Kahl Minchas Chinuch*, 2004 U.S. Dist. LEXIS 19501, *16 (S.D.N.Y. Sept. 29, 2004) (emphasis added). Because of the "devastating" and "inevitable stigmatizing effect" such claims have on defendants, courts "strive to flush out frivolous RICO allegations at an early stage of the litigation." *Manhattan Telecomm. Corp., Inc. v. DialAmerica Mktg., Inc.*, 156 F.Supp.2d 376, 381 (S.D.N.Y. 2001). Indeed, since *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a litany of civil RICO cases making allegations like these have been routinely dismissed at the Rule 12(b)(6) stage.[1]

Plaintiff's conclusory and speculative FAC should be likewise dismissed. He simply has not pled a violation of 18 U.S.C. §1962(d) or an underlying substantive violation of 18 U.S.C. §1962(c), on which his §1962(d) claim is based. *See Slaney v. Int'l Amateur Athletic Fed.*, 244 F.3d 580, 600-01 (7th Cir. 2001).

II. FACTUAL ALLEGATIONS

A. Allegations Regarding The Parties

As a high school dropout with an arrest record, Plaintiff identifies himself as a so-called "drop-out-plus-one", which he defines as a "high school dropout" who also has "an arrest record, a recent physical injury, and/or an unstable work history." FAC, ¶¶ 16, 18. He "accepted a job at IPC in 2013 for approximately $10.50/hour" and worked there for two short stints (one for 10 months in 2013 and one for five/six months in 2014) as an "hourly-paid production worker." *Id.*, ¶¶1, 18. His highest wage rate during this period was purportedly around $10.85/hour. *Id.*, ¶18. No other detail is provided about his work and the FAC does not allege, among other things,

[1] *See Varela v. Gonzales*, 773 F.3d 704 (5th Cir. 2014); *Simpson v. Sanderson Farms, Inc.*, 744 F.3d 702 (11th Cir. 2014); *Walters v. McMahen*, 795 F.Supp.2d 350 (D. Md. 2011) (*Walters I*), *aff'd*, 684 F.3d 435 (4th Cir. 2012) (*Walters II*); *Jus Punjabi, LLC v. Get Punjabi Inc.*, 2015 WL 2400182, *7 (S.D.N.Y. May 20, 2015), *aff'd*, 2016 WL 697401 (2nd Cir. Feb. 22, 2016); *Nichols*, 608 F.Supp.2d at 542; *Cruz v. Cinram Int'l, Inc.*, 574 F.Supp.2d 1227 (N.D. Ala. 2008).

what Plaintiff's job duties actually were, how his job as a production worker offered him any insight into IPC's process for determining whether new hires were authorized to work in the U.S., what benefits he received while at IPC, whether his wages would have risen more had he remained employed for a single, extended period of time, how his wages compared to others at IPC, or how his wages compared to other "drop-out-plus-ones" – whether at IPC or elsewhere.

Martinez and Hernandez are "IPC Human Resources ('HR') workers," and Harding "is their boss, the HR Director in charge of hiring for the plant." *Id.*, ¶4. Martinez and Hernandez "report directly to [Harding], who is ultimately responsible for their acts." *Id.*, ¶31.[2]

B. Market Allegations

Plaintiff alleges that IPC's pork processing plant near Delphi employs 2,500 to 3,000 people. *Id.*, ¶12. He does not identify how many of IPC's employees are "hourly-paid," but claims that most hourly-paid workers either process pigs or work on the production line, and that the "typical" production worker is a "drop-out-plus-one." *Id.*, ¶¶13, 16. He also claims that virtually all of IPC's employees come from 15 Indiana counties located within a 50-mile radius of IPC's Delphi plant. *Id.*, ¶9. While Plaintiff does not articulate how he knows this, he nevertheless alleges that this geographic area constitutes IPC's "labor market." *Id.*, ¶¶9-11. To support this speculation, Plaintiff asserts that, since most workers without a high school education spend 45 minutes or less commuting to work, the geographic area from which IPC draws its employees has to be within a 45 minute drive of Delphi (*i.e.* has to be within a 50-mile radius of IPC's plant).[3] *Id.*, ¶¶10-11. Left unexplained is how commuting data concerning high school drop outs bears on the entirely different drop-out-plus-one labor market from which IPC purportedly draws its employees.

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[2] Harding, in turn, reports to James Hardison, IPC's Vice President for Human Resources. *Id.* Hardison "approves" the way Defendants "run the Human Resources Department," but he is not a defendant. *Id.*

[3] As Plaintiff lived in Kokomo when he was employed at IPC, he conveniently falls within his *self-made definition* of the labor market. *Id.*, ¶18. Google Maps and federal census data confirm Kokomo is about 32 miles (or about 40 minutes) from IPC, but that same source also establishes that Kokomo is within 50 miles of the northern suburbs of Indianapolis, including all of Hamilton County (population 274,569 in 2010) (with Carmel, Fishers, Westfield, Noblesville). *See Cloe v. City of Indianapolis*, 712 F.3d 1171, 1177 n.3 (7th Cir. 2013) (taking judicial notice and

Having thus created his own geographic contours to the labor market, Plaintiff next alleges that "IPC employed approximately 29% of all 'drop-out-plus-one workers' who reside and work in this labor market." *Id.*, ¶17. Plaintiff claims to have derived this figure from 2006-10 census data and undated Bureau of Justice statistics that supposedly suggest there are approximately 10,327 "drop-out-plus-one" workers living and working in the market.[4] *Id*. This number is improbable. Defendants have been unable to locate any census data regarding a drop-out-plus-one population (whether in Indiana or elsewhere). Moreover, Plaintiff's reference to Bureau of Justice statistics is nonsensical. That agency collects "information on crime, criminal offenders, victims of crime, and the operation of justice systems." *See* http://www.bjs.gov/index.cfm?ty=abu. How such information sheds any light on the number of workers within a 50-mile radius of IPC who have "an arrest record, a recent physical injury, and/or an unstable work history", *id.*, ¶16, is unexplained. Also unexplained is Plaintiff's conclusion that virtually every worker at IPC falls within the "drop-out-plus-one" classification.[5]

Nevertheless, Plaintiff builds upon his 29% figure to reach his ultimate conclusion that IPC has the market power to depress his wages because drop-out-plus-one workers like him are somehow tied to their employer. *Id.*, ¶¶ 20-29. This recital is based on a mish-mash of random

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estimating distance from Google Maps); *Cobb Theatres III, LLC v. AMC Entertainment Holdings, Inc.*, 101 F.Supp.3d 1319, 1329 (N.D. Ga. 2015) ("courts . . . commonly take judicial notice of information obtained specifically from Google Maps.") (citing cases).

[4] While courts can take judicial notice of census data, *Skolnick v. Board of Comm'rs of Cook County*, 435 F.2d 361, 363 (7th Cir. 1970), Plaintiff does not explain how references to data from 2006-2010 are helpful in describing the labor market in 2013-2014, particularly when data from the 2010-14 period is readily available. See http://factfinder.census.gov/.

[5] Assuming for a moment there are 10,327 "drop-out-plus-ones" in the labor market, Plaintiff's assertion that IPC employs 29% of them means that there are 2,995 workers within this classification that work for IPC. Assuming further that IPC employs a total of 2,500 to 3,000 people, *Id.*, ¶12, this means that every employee other than the four HR personnel identified in the FAC is a "drop-out-plus-one." Such a claim is fantastic.

allegations concerning wage rates, skill sets, vacancy rates, and the size of other employers in IPC's purported labor market. *Id.*, ¶¶21-29. For example, Plaintiff speculates that 30% of the jobs in the labor market available to high school drop outs are not available to the typical IPC worker (*i.e.* to a drop-out-plus-one) because those jobs require greater skill sets than are needed at IPC. *Id.*, ¶¶ 21-22. Yet Plaintiff never identifies what skill sets IPC requires (instead pointing to the purported skill sets needed for generic production work). *Id.*, ¶¶15, 21. He then alleges that, given this 30% figure, IPC's "share of relative employment" in the market is actually 41% rather than 29%. *Id.*, ¶22. Plaintiff does not describe how he arrived at this 41% number or explain why information regarding jobs available to high school drop outs has any impact on the percentage of drop-out-plus-ones IPC employs in the labor market.[6]

Plaintiff's references to wage rates are equally confounding. He asserts that "the average wage of full-time workers with less than a high school education" in the "IPC labor market" in 2013 was $14.05 while his own "drop-out-plus-one" 2013 wage rate was $10.50/hour.[7] *Id.*, ¶¶ 18, 29. But Plaintiff makes no effort to explain why it is rational to reference average wages from one market (the high school drop-out market) when discussing an employer's ability to affect wages in an entirely different market (the drop-out-plus-one market). Nor does he explain why referencing the wages of a short term employee such as himself, as opposed to the average wages earned by the drop-out-plus-one workforce at IPC, plausibly suggests that his employer

[6] Plaintiff doubles down on his market speculation by claiming that there is a "job vacancy rate" of 3%, (although for what market he does not say) and, as a result, "the number of alternative jobs available is an order of magnitude smaller than the number of drop-out-plus-one workers employed in the IPC labor market." *Id.*, ¶25. Assuming Plaintiff's reference to an "order of magnitude" is meant to convey that there is around a ten times difference between the 10,000 or so drop-out-plus-ones purportedly in the labor market and the number of alternative jobs available, the reader is still left to guess why a job vacancy rate of 3% results in only 1000 available jobs (or why such figures result in employees being tied to IPC).

[7] The $14.05 rate is notably less than what Plaintiff claimed the same workers were making between 2006 and 2010. Original Complaint, ¶26 (average wage during 2006-2010 was $14.32). If both allegations are credited, it would appear that wages in the overall labor market were experiencing a deflationary period while Plaintiff himself saw an increase of wages from $10.50 to $10.85. FAC, ¶18.

can depress wages in the market. In sum, Plaintiff's drop-out-plus-one market allegations are not just improbable; they are highly implausible.

C. The Alleged Hiring Scheme

Without offering a factual foundation, Plaintiff alleges an "Illegal Immigrant Hiring Scheme," *id.*, ¶¶2, 30-59, whereby Martinez and Hernandez interview and hire Spanish-speaking "illegal workers" and then complete IPC's portion of the worker's I-9 forms. In conjunction with this process, Plaintiff speculates that the workers provide information containing "red flags" which signal they are using "fake/fraudulent documents" and Social Security cards and are engaging in identity fraud. *Id.*, ¶37. The FAC cites "examples" of such activity, none of which are specifically alleged to have involved Martinez or Hernandez (or Harding). *Id.*, ¶36. Indeed, Plaintiff provides no details about even a single instance in which the "Scheme" was carried out, identifies no illegal workers who took part in the "Scheme," enumerates no dates on which the purportedly unlawful acts occurred, and identifies no specific documents used in the "Scheme." *Id.*, ¶¶35-42. Plaintiff also does not plead any facts suggesting how a production worker like himself would know about the hiring practices of a department where he never worked.

Undeterred by his lack of sources, Plaintiff speculates that Martinez and Hernandez carried out this Scheme "hundreds (or thousands)" of times over the last four years," *id.*, ¶61, and that Harding, as their supervisor, "is aware of their hiring criteria and approves of every aspect of it." *Id.*, ¶40. Plaintiff goes on to allege that Martinez and Hernandez lied (*i.e.*, falsely attested in violation of 18 U.S.C. §1546(a) and (b)(3))[8] when they supposedly recounted on I-9 forms that

[8] §1546(a) makes it a crime to: (i) make a false statement with respect to a material fact in any document required by the immigration laws; or (ii) accept or receive a document needed for entry or employment in the United States, knowing it to be fraudulent, falsely made, or procured by a false statement or fraud. 18 U.S.C. §1546(a). §1546(b)(3) makes it a crime to use a false attestation to satisfy a requirement of the immigration laws. *Id.*, §1546(b)(3). §1546(b)(1) and (2) make it a crime to use an identification card (i) that was not issued lawfully for use by its possessor or (ii) knowing that the document is false to satisfy a requirement of the immigration laws. *Id.*, §1546(b)(1), (2).

they examined documents provided by unnamed employees, affirmed that those documents appeared genuine, and represented, to the best of their knowledge, that those employees were authorized to work in the United States. *Id.*, ¶¶43-51. Plaintiff further alleges that Martinez and Hernandez violated §§1546(a), (b)(1), and (b)(2) by accepting or receiving identification documents knowing them to be fake or not belonging to the employee. *Id.*, ¶¶52-59. Martinez and Hernandez purportedly committed these violations "hundreds of times since 2012" and allegedly continue to do so, at Harding's direction. *Id.*, ¶¶48, 57. Because of this Scheme, "approximately 15-20% of the hourly production workers over the past four years are not legally authorized for employment." *Id.*, ¶42. Plaintiff therefore believes that the remainder – some 80-85% of IPC's workforce – is legally authorized to work in the United States.

D. The RICO Claim

The FAC asserts that the foregoing alleged breaches of 18 U.S.C. §1546 constitute predicate acts sufficient to establish a violation of 18 U.S.C. §1962(c). FAC, ¶¶51-57. §1962(c) makes it "unlawful for any **person** employed by or associated with any **enterprise** engaged in, or the activities of which affect, interstate or foreign commerce, to **conduct** or participate, directly or indirectly, in the conduct of **such enterprise's affairs** through a **pattern of racketeering activity** or collection of unlawful debt." 18 U.S.C. §1962(c) (emphasis added). Yet Plaintiff does not assert a §1962(c) claim. Instead, the FAC alleges a violation of RICO's conspiracy section, 18 U.S.C. §1962(d). FAC, ¶61 ("Defendants have conspired to violate 18 U.S.C. §1962(c), which is a violation of §1962(d), by their agreement for Martinez and Hernandez to carry out the [Hiring] Scheme . . .").

The FAC then tries to recite the familiar elements of a RICO claim, albeit in conclusory fashion: IPC is the RICO "enterprise." *Id.*, ¶62. The alleged §1546 violations are the predicate acts that form a pattern of racketeering activity. *Id.*, ¶¶60, 63. Harding, as "part of IPC's management," and Martinez and Hernandez, as "his pawns," are presumably the "persons." *Id.*, ¶64. And Plaintiff speculates that he has been "proximately harmed" by these RICO violations "because his wages as an IPC hourly worker were depressed below what they would otherwise have been ….[,] the precise amount being subject to proof." *Id.*, ¶68.

III. STANDARD OF REVIEW

Since *Iqbal* and *Twombly*, courts take a "two-pronged approach when considering a Rule 12(b)(6) motion to dismiss." *Browning v. Flexsteel Indus., Inc.*, 955 F.Supp.2d 900, 907 (N.D. Ind. 2013) (DeGuilio, J.). "First, pleadings consisting of no more than mere conclusions are not entitled to the assumption of truth." *Id.* (citing *Iqbal*, 556 U.S. at 678-79). "This includes legal conclusions couched as factual allegations, as well as '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.'" *Id.* (citing *Iqbal*, 556 U.S. at 678). "Second, if there are well-pleaded factual allegations, courts should 'assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.'" *Id.* (quoting *Iqbal*, 556 U.S. at 679). "'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (emphasis added). "The [FAC] 'must actually suggest that the plaintiff has a right to relief, by providing allegations that raise a right to relief above the speculative level.'" *Indep. Trust Corp. v. Stewart Info. Servs. Corp.*, 665 F.3d 930, 934-35 (7th Cir. 2012) (citation omitted). In other words, "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.''" *Iqbal*, 556 U.S. at 678. Moreover, not all factual allegations must be credited; allegations that are "unrealistic and nonsensical" or "implausible and ungrounded" must be rejected. *Atkins v. City of Chicago*, 631 F.3d 823, 832 (7th Cir. 2011).

Pleading a plausible fraud-based RICO claim also requires that the factual content supporting the allegations be pled with particularity. *See, e.g.*, *Lachmund v. ADM Investor Serv., Inc.*, 191 F.3d 777, 784 (7th Cir. 1999) ("[Rule 9(b)] appl[ies] to allegations of fraud in a civil RICO complaint"); *Goren v. New Vision Int'l, Inc.*, 156 F.3d 721, 726 (7th Cir. 1998); *Jus Punjabi, LLC*, 2015 WL 2400182, *7 (immigration fraud must be pled pursuant to Rule 9(b)); *Magnifico v. Villanueva*, 783 F.Supp.2d 1217, 1227-28 (S.D. Fla.2011) (Rule 9(b) applies to predicate act based on §1546 violation); *Lauter v. Anoufrieva*, 642 F.Supp.2d 1060, 1080–81 (C.D. Cal. 2008); *Cruz*, 574 F.Supp.2d at 1232-1233. That factual content must detail the "'who, what, when, where, and how' of the fraud." *AnchorBank, FSB v. Hofer*, 649 F.3d 610, 615 (7th Cir. 2011). This means that "a RICO plaintiff must, at a minimum, describe the two predicate acts of fraud with some specificity and state the time, place, and content of the alleged false representations, the method by which the misrepresentations were communicated, and the identities of the parties to those misrepresentations." *Slaney*, 244 F.3d at 597. "For the 'who' in a case with multiple defendants, the plaintiff must specify which defendants were responsible for specific statements or actions." *Clark v. Robert W. Baird Co., Inc*., 142 F.Supp.2d 1065, 1072 (N.D. Ill. 2001) (citing *Vicom, Inc. v. Harbridge Merchant Servs., Inc.*, 20 F.3d 771, 778 (7th Cir.1994)). "For the 'when,' it is not enough to merely allege a period of months or years, or the duration of the activity." *Id.* And for the "what," the plaintiff must "describe in detail the conspiracy, including the identity of the co-conspirators, the object of the conspiracy, and the date and substance of the conspiratorial agreement." *Walters I*, 795 F.Supp.2d at 355 (quotation omitted). Moreover, "[a]llegations based on 'information and belief' … won't do in a fraud case – for 'on information and belief' can mean as little as 'rumor has it that….'" *Bogina v. Medline Indus., Inc.*, 809 F.3d 365, 370 (7th Cir. 2016); *Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 948 (7th Cir. 2013) ("We frown on making allegations 'on information and belief' in the fraud context and generally find that such claims do not meet Rule 9(b)'s particularity requirement.").

IV. LEGAL ARGUMENT

Plaintiff has attempted to plead a single RICO claim under §1962(d) in which he alleges Defendants conspired to violate §1962(c). This requires him to supply sufficient factual content to allow the court to plausibly conclude *not only* that each defendant: (1) agreed to participate in the affairs of an enterprise through a pattern of racketeering activity, and (2) further agreed that someone would commit at least two predicate acts to accomplish their illegal goals, *but also* that one or more of these same Defendants (3) conducted (4) an enterprise (5) through a pattern (6) of racketeering activity. *Slaney*, 244 F.3d at 598, 600. Assuming he meets each of these pleading thresholds, the Plaintiff must then provide facts showing: (7) he was injured in his business or property; and (8) that injury was "by reason of" the alleged racketeering activities. *Evans v. City of Chicago*, 434 F.3d 916, 924 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013).

Plaintiff has not met these pleading requirements as he fails to sufficiently detail:

(1) The factual content of any alleged agreement by the Defendants to violate §1962(c);

(2) That a civil RICO conspiracy is even possible between IPC employees, under the intracorporate conspiracy doctrine;

(3) A violation of §1962(c) claim because:

   a. Plaintiff has not pled the requisite factual content supporting his bald assertion that Martinez, Hernandez and/or Harding committed any predicate acts; and

   b. Plaintiff has not pled (with particularity or otherwise) that any of the Defendants conducted IPC's affairs;

(4) Any "injury" to business or property that was "proximately caused" by Defendants' alleged violation of §1962.

Individually, each failure merits dismissing Plaintiff's complaint – and Plaintiff fails not just with one of the foregoing but with all of them.

A. Plaintiff Has Failed To Plead Factual Content Sufficient To Establish That Defendants Agreed To Violate §1962(c).

Plaintiff's §1962(d) claim fails for multiple reasons. First, and foremost, it fails because Plaintiff has not pled that the Defendants actually agreed to violate §1962(c). "[T]he touchstone of liability under §1962(d) is an agreement to participate in an endeavor which, if completed, would constitute a violation of the substantive criminal statute." *DeGuelle v. Camilli*, 664 F.3d 192, 204 (7th Cir. 2011) (emphasis added). "A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive offense." *Salinas v. United States*, 522 U.S. 52, 65 (1997). So, because Plaintiff has asserted a conspiracy to violate §1962(c), he is required to allege that "'(1) [the Defendants] agreed to … participate in the affairs of an enterprise through a pattern of racketeering activity, and (2) [they] further agreed that someone would commit at least two predicate acts to accomplish those goals.'" *DeGuelle*, 664 F.3d at 204; *Lachmund*, 191 F.3d at 783-784.

Plaintiff has pled neither prerequisite to a viable conspiracy claim. He has not specifically alleged any "facts indicating an agreement by [Martinez, Hernandez, and Harding] as to which roles they would play in the enterprise." *Goren*, 156 F.3d at 732; *Lachmund*, 191 F.3d at 785 (same). Nor is there "any specific allegation that the [D]efendants agreed to the commission (by someone) of two specific predicate acts in furtherance of the alleged conspiracy." *Lachmund*, 191 F.3d at 785; *Goren*, 156 F.3d at 732 (same). Indeed, the FAC barely mentions the purported agreement at all – limiting its description of the conspiracy on which Plaintiff's claim is founded to just one paragraph. *See* FAC, ¶61. Missing are necessary details: (a) the specific parameters of the agreement; (b) what each Defendant's role in the "conspiracy" was; (c) when, where, and how the agreement was reached; (d) why the Defendants engaged in the conspiracy; (e) the particular predicate acts to be committed by each Defendant;

and (f) how IPC's affairs would be conducted through these supposed racketeering activities.

"Absent such particular pleadings, [the FAC] contains nothing more than 'conclusory, vague and general allegations of a conspiracy' that are insufficient to state a claim under §1962(d)." *Lachmund*, 191 F.3d at 785. *See also United Food and Comm'l Workers Unions v. Walgreen Co.*, 719 F.3d 849, 856-57 (7th Cir. 2013); *Holland v. Cerberus Capital Mgmt.*, 2014 WL 6473479, *10 (N.D. Ind. Nov. 18, 2014) (dismissal mandated where plaintiff "fails to provide specific facts indicating each Defendant entered into an agreement to violate RICO"); *Walters I*, 795 F.Supp.2d at 355 (plaintiff required to "describe in detail the conspiracy, including the identity of the co-conspirators, the object of the conspiracy and the date and substance of the conspiratorial agreement"). Because Plaintiff's conclusory allegations fall far short of the pleading requirements of Rules 8 and 9(b), his FAC must be dismissed.

B. The Intracorporate Conspiracy Doctrine Demands Dismissal Of The §1962(d) Claim Because Co-Workers Cannot Engage In A Conspiracy.

Plaintiff's §1962(d) claim fails for yet another basic reason – *i.e.*, employees cannot "conspire" amongst themselves to violate RICO. *Walters I*, 795 F.Supp.2d at 358 ("a corporation cannot conspire with its employees—and employees, when acting within the scope of their employment, cannot conspire amongst themselves."). This "intracorporate conspiracy doctrine" applies to all variety of conspiracy cases, including civil RICO claims. *Id.*; *Fogie v. THORN Americas, Inc.*, 190 F.3d 889, 899 (8th Cir. 1999); *District 1199P Health and Welfare Plan v. Janssen, L.P.*, 2008 WL 5413105, *14 (D.N.J. Dec. 23, 2008) ("a corporation cannot conspire with its agents and/or employees under §1962(d) of RICO."); *United States v. Gwinn*, 2008 WL 867927, *20 (S.D.W.Va. March 31, 2008) ("agents of the same principal cannot conspire with one another."); *Grose v. Mansfield Corr. Inst.*, 2007 WL 2781654, *3 (N.D. Ohio Sept. 24, 2007) ("two employees or agents of the same corporation cannot form a conspiracy with one another because they are not considered 'two or more separate persons.'"); *Broussard v. Meineke Discount Muffler Shops*, 945 F.Supp. 901, 912 (W.D.N.C. 1996) ("a corporate entity cannot 'conspire' with its own officers and employees").

The Seventh Circuit adheres to this intracorporate conspiracy doctrine, having concluded that "managers of a corporation jointly pursuing its lawful business do not become 'conspirators' when acts within the scope of their employment are said to be discriminatory." *Wright v. Illinois Dept. of Children & Family Serv.,* 40 F.3d 1492, 1508 (7th Cir. 1994); *Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.,* 184 F.3d 623, 632-33 (7th Cir. 1999) (since a "conspiracy cannot exist solely between members of the same entity" . . . supervisors and subordinates are not subject to liability under a conspiracy theory "so long as all are working in the corporation's … interest."); *Beese v. Todd*, 35 Fed. Appx. 241, 243 (7th Cir. 2002); *Gonsalves v. Cleveland*, 2011 WL 4606660, *4 (N.D. Ind. Sept. 30, 2011); *Berrios v. Kender*, 2005 WL 1653928, *4 (N.D. Ind. July 11, 2005).[9] Nothing in the FAC suggests that Martinez, Hernandez and Harding were acting outside the course and scope of their employment. To the contrary, the FAC describes the typical supervisor-subordinate employment relationship between "Human Resources … workers" and "their boss." FAC, ¶¶4, 31, 57, 64. Accordingly, Martinez, Hernandez and Harding cannot have conspired to violate §1962(c) in violation of §1962(d).

C. Plaintiff Has Failed To Plead Factual Content Sufficient To Establish Defendants Violated §1962(c).

Because Plaintiff alleges Defendants conspired to violate §1962(c), he must plead the

[9] *Ashland Oil v. Arnett*, 875 F.2d 1271, 1281 (7th Cir. 1989) is not to the contrary. In *Ashland*, a jury concluded that two brothers violated §1962(c), but the company they owned and operated did not conspire to violate §1962(d). The Seventh Circuit reversed and remanded for a new trial, finding that the jury's conclusions were inconsistent. The Seventh Circuit subsequently held, however, that a parent company cannot engage in a RICO conspiracy with its subsidiaries, agents or employees. *Fitzgerald v. Chrysler Corp.*, 116 F.3d 225, 228 (7th Cir. 1997). And, as explained above, the Seventh Circuit expressly adopted the intracorporate conspiracy doctrine with regard to employees in *Payton* and *Wright*. The holdings in *Payton*, *Wright*, and *Fitzgerald* reveal that defendants who are merely employees, not owners, of a corporate "enterprise" are entitled to the absolute bar offered by the intracorporate conspiracy doctrine.

details necessary to "satisfy all of the elements of [that subsection]." *Salinas*, 522 U.S. at 65; *Stachon v. United Consumers Club, Inc.*, 229 F.3d 673, 677 (7th Cir. 2000) ("[s]ince [Plaintiff] fail[s] to establish a violation of section 1962(c), [his] 1962(d) claim based on the same facts must fail as well."). He has not done so.

1. Plaintiff Has Not Pled With Particularity That The Defendants Committed Predicate Acts.

"[T]o allege a claim under §1962(c), a plaintiff must allege that … each defendant (1) conducted (2) an enterprise (3) through a pattern (4) of racketeering activity." *Browning*, 955 F.Supp.2d at 908 (citing *Slaney*, 244 F.3d at 597); *Bible v. United Student Aid Funds, Inc.*, 799 F.3d 633, 655 (7th Cir. 2015). Moreover, "[w]here RICO is asserted against multiple defendants a plaintiff must allege at least two predicate acts by each defendant." *In re WellPoint, Inc. Out-of-Network UCR Rates Litig.*, 903 F.Supp.2d 880, 914 (C.D. Cal. 2012); *Defalco v. Bernas*, 244 F.3d 286, 322 n.22 (2d Cir. 2001) ("[T]he requirements of section 1962(c) must be established as to each defendant."); *Browning*, 955 F.Supp.2d at 908. Plaintiff has not provided the factual content needed to plausibly plead that any Defendant committed two or more predicate acts.

First, the FAC does not even attempt to allege that Harding violated §1546. *See, e.g.*, FAC, ¶43 ("Martinez and Hernandez violate 18 U.S.C. §1546(a) and §1546(b)(3)"), ¶52 ("Martinez and Hernandez have also personally violated 18 U.S.C. §1546(a) and 18 U.S.C. §§1546(b)(1)-(b)(2)"), ¶57 (Martinez and Hernandez "personally violated §§1546(a), (b)(1), and (b)(2)"). Nor does the FAC assert that Harding committed any predicate acts. In the absence of such allegations, Harding cannot have violated §1962(c). *Browning*, 955 F.Supp.2d at 908; *Defalco*, 244 F.3d at 322 n.22 ("[T]he requirements of section 1962(c) must be established as to each defendant.").

Given the absence of *any* allegations that Harding engaged in misconduct contrary to

§1962(c), Plaintiff must establish that Martinez and Hernandez violated the subsection in order for his conspiracy claim to survive. Yet Plaintiff has failed to plausibly plead either Defendant committed any predicate acts. While the FAC recites that "Martinez and Hernandez" (it never differentiates between the two) violated §1546 "hundreds (or thousands) of times," FAC, ¶61, it does not describe any of these alleged instances with Rule 9(b) particularity. *Magnifico*, 783 F.Supp.2d at 1227 ("RICO claims based solely on fraud-related predicate acts such as mail, wire, or immigration document fraud, must be plead with particularity."); *Jus Punjabi, LLC*, 2015 WL 2400182, *7; *Lauter*, 642 F.Supp.2d at 1080–81; *Cruz*, 574 F.Supp.2d at 1230. Rule 9(b) requires a RICO plaintiff to "describe the two predicate acts of fraud with some specificity and state the time, place, and content of the alleged false representations, the method by which the misrepresentations were communicated, and the identities of the parties to those misrepresentations." *Slaney*, 244 F.3d at 597. Allegations on information and belief, *Bogina*, 809 F.3d at 369, that merely reference "a period of months or years," *Clark*, 142 F.Supp.2d at 1072, or do not identify "which defendants were responsible for specific statements or actions" do not suffice. *Id.*

The FAC fails to provide the specifics mandated by law. It merely describes "examples" of certain activities which Plaintiff asserts are §1546 violations. FAC, ¶36. Left out are facts showing that Martinez and Hernandez engaged in those activities. Plaintiff does not allege the "time, place, and content" of a single false representation made by either Defendant. He does not point to the specific documents Defendants concluded were fake yet nevertheless certified as valid. He does not even explain how he (as a short-term production worker with no connection to the HR Department) knows about the process Martinez and Hernandez supposedly undertook to verify whether unidentified workers were authorized to work in the United States. In short, the FAC does not provide the necessary details to survive dismissal.

Recognizing this fatal defect, Plaintiff's FAC tries to excuse his inability to provide specifics by pleading "on information and belief," that the relevant forms which would supply those details "are in the hands of the Defendants/IPC, as well as the unauthorized aliens who possess them. . ." FAC, ¶¶48, 56. Plaintiff cannot erase the mandates of Rule 9(b) so easily. Instead, he must explain with particularity why he believes the "forms" contain evidence of wrongdoing. *Uni*Quality, Inc. v. Infotronx, Inc.*, 974 F.2d 918, 924 (7th Cir. 1992) ("allegations made upon information and belief are insufficient, even if the facts are inaccessible to the plaintiff, unless the plaintiff states the grounds for his suspicions"); *Romani v. Shearson Lehman Hutton*, 929 F.2d 875, 878 (1st Cir. 1991) ("Where allegations of fraud are . . . based only on information and belief, the complaint must set forth the source of the information and the reasons for the belief"). Plaintiff has not done so. And while Rule 9(b) can sometimes be relaxed if the information needed to plead fraud is "in Defendants' exclusive possession," *Gavin v. AT&T Corp.*, 543 F.Supp.2d 885, 897 (N.D. Ill. 2008), that is not the case here. Plaintiff asserts that other IPC employees (both current and former) have acted as sources for his allegations that "many" unnamed individuals lack valid authorization documents and that Martinez and Hernandez have hired "many" illegal workers. FAC, ¶¶41-42. Yet none of these purported sources have apparently supplied him with specifics about even a single incident of immigration fraud. Implausible as that may seem, Plaintiff has represented through his allegations that people other than the three Defendants have access to facts needed plead fraud with particularity. Accordingly, relaxing the requirements of Rule 9(b) is not appropriate here. *Gavin*, 543 F.Supp.2d at 897-98.

The FAC does not plead facts that plausibly suggest that Defendants engaged in predicate acts of immigration fraud. Plaintiff's "boilerplate" allegations neither satisfy Rule 9(b)'s obligations for a civil RICO claim, *Goren*, 156 F.3d at 727, nor go beyond the "speculative level" required to avoid dismissal under Rule 8. *Twombly*, 550 U.S. at 555. Because the FAC does not allege that any Defendant committed multiple predicate acts, it must be dismissed.

2. Plaintiff Has Not Pled Factual Content Showing That Any Of The Defendants "Conducted" IPC's Affairs.

A RICO plaintiff must plead more than just predicate acts. He must also include factual allegations sufficient to show that each defendant "conducted" the affairs of the criminal enterprise through his or her racketeering activities. *Browning*, 955 F.Supp.2d at 908. RICO "liability depends on showing that the defendants conducted or participated in the conduct of the 'enterprise's affairs,' not just their own affairs." *Id.* at 918 (quoting *Crichton v. Golden Rule Ins. Co.*, 576 F.3d 392, 398 (7th Cir. 2009)) (emphasis added)); *Jay E. Hayden Found. v. First Neighbor Bank*, 610 F.3d 382, 389 (7th Cir. 2010) (quotation omitted).

To conduct the enterprise's affairs, "one must participate in the operation or management of the enterprise itself." *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993); *id*. at 179 ("one must have some part in directing [the enterprise's] affairs."). This inquiry examines the character of the activities alleged and the amount of control over the enterprise. First, "mere participation in the activities or the enterprise" or "simply performing services for an enterprise, even with knowledge of the enterprise's illicit nature, is not enough to subject an individual to RICO liability under §1962(c)." *Goren*, 156 F.3d at 727-28; *Crichton*, 576 F.3d at 399 ("tangential involvement in an enterprise" is not enough). Second, the defendant must have "asserted some control over the enterprise." *Slaney*, 244 F.3d at 598 (citation omitted). Notably, this control must be exercised over the entire enterprise. "Simple exertion of control over one aspect of an enterprise's activities does not evince control over the enterprise itself." *Id.*

The FAC does not allege that Martinez, Hernandez, or Harding conducted or participated in the conduct of the affairs of IPC (an entity with up to 3,000 employees) through racketeering activities (*i.e.*, through violations of §1546). The FAC does not assert that Martinez and/or Hernandez control or direct the HR Department (which would be insufficient, *see Slaney*), let alone control the operation or management of IPC as a whole. Instead, it claims they are workers – "pawns" even – in IPC's HR Department who merely interview prospective employees. *Id.*, ¶¶4, 64. Nothing in these (or any other) allegations plausibly suggests that Martinez or Hernandez conducted IPC's affairs. At most, the FAC reveals that the Defendants engaged in the kind of "tangential involvement," or "mere participation" in IPC's activities that, as a matter of law, is insufficient to meet RICO's "conduct" requirement. *Goren*, 156 F.3d at 727; *Crichton*, 576 F.3d at 399.

The FAC also does not allege that Harding controls IPC. While it asserts Harding is "part of IPC's management," FAC, ¶40, 64, the FAC provides no details from which to plausibly presume he conducted the affairs of a 3000-person enterprise, let alone conducted those affairs through a pattern of racketeering. Therefore, references to Harding being part of "management" are the kind of "conclusion[s] without factual support" that carries no weight. *Browning*, 955 F.Supp.2d at 912 ("single perfunctory allegation" that defendant "was the leader of the enterprise and directed its affairs" is "conclusion without factual support" that did not satisfy Rule 8).

Because Plaintiff has not alleged that any Defendant "conducted" IPC's affairs through the alleged §1546 violations, his FAC must be dismissed for this reason as well.

D. Plaintiff Has Not Plausibly Pled An Injury To His Business Or Property That Was Proximately Caused By Defendants' Alleged RICO Violations.

Plaintiff's FAC must be dismissed for another fundamental reason: its conclusory statements about damages flunk the *Iqbal* and *Twombly* test. A §1962(d) conspiracy claim can only by pursued through the private right of action in 18 U.S.C. §1964(c). This latter provision provides that "[a]ny person injured in his business or property *by reason of* a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court." 18 U.S.C. §1964(c) (emphasis added). Consequently, Plaintiff must plausibly plead not only a violation of §1962(d) but also that the racketeering activities to which he points caused him injury. *Browning*, 955 F.Supp.2d at 916 ("[A] plaintiff must allege that the pattern of racketeering activities caused injury to his business or property.").

To pursue a §1964(c) right of action, therefore: (1) the plaintiff must have been "injured in his business or property"; and (2) the injury must be "by reason of" the alleged §1962 violation – *i.e.*, the racketeering activity must be the proximate cause of Plaintiff's injury. Each of these is "a standing requirement." *Evans*, 434 F.3d at 924 (citing *Gagan v. American Cablevision, Inc.*, 77 F.3d 951, 958-59 (7th Cir. 1996)) (first requirement); *Hemi Group, LLC v. City of New York*, 559 U.S. 1, 4-5 (2010) (second requirement). Numerous complaints like this one (*i.e.*, alleging that the hiring of illegal workers via §1546 racketeering activities depressed wages) have been dismissed for not meeting these requirements.[10] Plaintiff's claim suffers from the same fatal defect.

1. The Allegations Of Injury To Plaintiff's Business Or Property Are Not Plausible.

Civil RICO only permits damages which are "concrete and actual, as opposed to speculative and amorphous." *Evans*, 434 F.3d at 932 (quotation omitted) ("RICO injury requires proof of a concrete financial loss and does not encompass mere injury to a valuable intangible property interest."); *In re Bridgestone/Firestone, Inc. Tires Prod. Liab. Litig.*, 155 F.Supp.2d

[10] *See, e.g., Varela*, 773 F.3d at 710-12; *Simpson*, 744 F.3d at 709-15; *id.* at 705 ("essential problem with the amended complaint is that it offers virtually no real evidence to plausibly suggest either injury or proximate cause."); *Walters I*, 795 F.Supp.2d at 357, *aff'd*, *Walters II*, 684 F.3d at 443-45; *Nichols*, 608 F.Supp.2d at 539-42. *See also Baker v. IBP*, 357 F.3d 685, 692 (7th Cir. 2004) (dismissal of similar allegations on different grounds).

1069, 1090 (S.D. Ind. 2001) ("Federal courts have consistently and repeatedly held that to satisfy the injury requirement of section 1964, a plaintiff must prove an actual, concrete monetary loss (*i.e.*, an 'out-of-pocket' loss)."). Plaintiff cannot get out of this first 1964(c) gate.

a) Allegedly Depressed Wages Are Not A Compensable RICO Injury.

Plaintiff's alleged injuries are amorphous and speculative, not concrete. While he asserts that "his wages as an IPC hourly worker were depressed below what his wages would otherwise have been," FAC, ¶68, Plaintiff does not provide factual content sufficient to infer that he suffered any loss. For example, he does not allege what he would have earned but for the purported immigration fraud. Instead, he simply notes that as a "drop-out-plus-one" he earned approximately $10.50/hour when he started at IPC in 2013 and at some point thereafter received an increase to $10.85/hour. *Id.*, ¶18. He then compares these wages to the purported $14.05 average wage earned by full-time workers in the market who have "less than a high school education." *Id.*, ¶29. Comparing his wages to wages earned by a different demographic group – *i.e.*, workers without the "plus-one" factor that Plaintiff so relies upon in his market theory – does not suggest that he has suffered "concrete financial loss" or an "out-of-pocket loss." *Bridgestone/Firestone*, 155 F.Supp.2d at 1090. This lack of concreteness is amplified by Plaintiff's failure to supply information about whether these so-called comparators worked in the meatpacking industry or explain how one can plausibly compare a single employee's pay at a single employer with the *average* pay (crossing all-seniority levels) of demographically different workers from presumably all industries (or from all production occupations).

Plaintiff's diminished income claim also runs afoul of the Seventh Circuit's holding that "foregone earnings stemming from the lost opportunity to seek or gain employment are, as a matter of law, insufficient to satisfy §1964(c)'s injury to 'business or property' requirement where they constitute nothing more than pecuniary losses flowing from what is, at base, a personal injury." *Evans*, 434 F.3d at 930-31. While *Evans* held out the possibility that loss of wages might constitute an injury to "business or property," the Seventh Circuit made clear that to show such an injury a RICO plaintiff would first have to "establish that he has been unlawfully deprived of a property right in promised or contracted for wages[.]" *Id.* at 928.

Plaintiff does not plead anything that exempts him from the default rule that lost (or depressed) wages are not compensable under RICO. He does not claim a contractual right to particular wages. *See Triumph Packaging Group v. Ward*, 877 F.Supp.2d 629, 641 (N.D. Ill. 2012) (failure to pay bonus not compensable injury to business or property). Nor does he claim that a right to work for a particular wage (above the minimum wage) is a cognizable property right. *See Evans*, 434 F.3d at 929. Therefore, Plaintiff's amorphous diminished wage claim does not amount to the type of "concrete financial loss" required to establish a RICO injury.

b) Plaintiff's Labor Market Allegations Do Not Support A Claim Of Injury.

Plaintiff tries to bolster his allegations of "injury" by propounding nebulous market theories and making threadbare recitals about IPC's supposed "labor market." This attempt mirrors the ill-fated claim explicitly rejected in *Simpson*. 744 F.3d at 707-12. In *Simpson*, plaintiffs alleged that an employer engaged in a civil RICO conspiracy by repeatedly making false attestations in violation of 18 U.S.C. §1546. The plaintiffs speculated that this allowed the employer (Sanderson Farms) to hire illegal workers and depress the wages of properly authorized hourly workers at its poultry plant. *Id.* at 706-07. The plaintiffs "posit[ed] a gap between the hourly wages that the plaintiffs actually received at Sanderson and the wages they 'would have received had the Defendants not violated 1546[.]'" *Id.* at 709. But the plaintiffs failed to point to particular facts showing their wages declined because of the hiring of illegal immigrants. Instead, they relied on a "vague market theory" that the presence of illegal workers in a self-described "labor market" led to depressed wages. These allegations, however, "offer[ed] virtually no real evidence to plausibly suggest either injury or proximate cause." *Id.* at 705. Accordingly, the Court rejected the plaintiffs' theory, finding that they pled "injury at only the highest order of abstraction and with only conclusory allegations," such that they "d[id] not come close to stating a plausible claim for relief" under RICO. *Id.* at 709, 708.

Plaintiff's injury allegations also do not come close to a plausible claim for relief. As in *Simpson*, Plaintiff has simply "posit[ed] a gap between the hourly wages that the [P]laintiff actually received at [IPC]" and what he hypothesizes he "would have received had the Defendants not violated 1546." *Id.* at 707; FAC, ¶66. However, he lacks any supporting market data, like: (1) what his wage would be absent the alleged §1546 misconduct; (2) what other "drop-out-plus-ones" make, in the "IPC labor market" or elsewhere; (3) what workers at other meat processing facilities make "in the relevant market, in the state, or even in the region – let alone attempt to distinguish between the wages paid by those employers who hire illegal workers and those who do not"; or (4) data showing that his "wages decreased – or even increased at a slower rate – after [IPC] began hiring illegal workers."[11] *Id.* at 709. Instead, he simply compares himself to high school drop-outs, FAC, ¶26, despite the fact that his market theory is grounded on the existence of a "drop-out-plus-one" workforce. *Id.*, ¶29.

Plaintiff's abstract market theory breaks down other ways. "To begin with, [Plaintiff has] entirely failed to describe the relevant labor market in quantifiable terms." *Simpson,* 744 F.3d at 710. While he self-defines the "IPC labor market" as the 15 counties within a 50-mile radius of IPC, FAC, ¶¶9-10, Plaintiff does not explain why this "labor market" is plausible other than relying on commuting times for high school drop-outs, not his drop-out-plus-one demographic. He then contends that IPC employs 29% of the drop-out-plus-one workers in this market, but as

[11] As in *Simpson*, Plaintiff is forced to concede that his wages *increased* over time. *Compare Simpson*, 744 F.3d at 707 (plaintiffs lacked "data or facts that actually evince a decrease in wages over time") *with supra*, at 5 & n.7.

discussed *supra* at 3-6 this figure is implausible. He also provides no facts supporting his conjecture that these drop-out-plus-ones are "tied" to IPC. *See supra* at 4-6 and n.5&6. Indeed, his theory that workers do not leave IPC due to some mythically described "tie" is contradicted by the FAC's other allegations. Plaintiff asserts that IPC hired "hundreds (if not thousands) of illegal workers over the past four years," *id.*, ¶52, and that these undocumented workers account for 15-20% of IPC's "2,500 – 3,000" employee-strong workforce. *id.*, ¶¶9, 37. This story, if believed, describes an employer which experiences substantial turnover of its workforce. That employees come and go at such a high rate is the very antithesis of a workforce that is *tied* to IPC.

Plaintiff's FAC also lacks any plausible allegations that wages in the "market" are depressed due to the number of undocumented workers employed in the market. *Simpson* makes clear that such an assertion "is not self-evident in all markets," and Plaintiff has "alleged no facts to render it plausible here." *Simpson*, 744 F.3d at 710. He has not "estimated the number of unskilled workers in the market [or] what percentage of that workforce is work-authorized."[12] *Id*. He has not cited reports or studies which say that one can conclude wages are depressed merely because some unidentified number of undocumented workers are present in the market or that wages will be depressed if a scant 15-20% of a single employer's workforce in that market is "illegal." But without such additional, coherent demographic facts, the court "cannot plausibly infer whether the presence of illegal workers has actually depressed wages in a wholly nebulous labor market or in the more limited confines of the [IPC] plant." *Id.*

2. The Purported Predicate Acts Did Not Proximately Cause Plaintiff's "Injury."

This Court also cannot plausibly conclude that Defendants' alleged racketeering activity

[12] Plaintiff guesses that 15-20% of IPC's workforce is undocumented (although he does not say how he knows this); he does not identify how many workers are undocumented in the 15 county "market" from which IPC supposedly pulls its workers.

proximately caused his alleged RICO injury. *See, e.g.*, *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268 (1992); *Evans*, 434 F.3d at 931–32. As this Court stated in *Browning*:

> [T]he plaintiff is required to show that a RICO predicate offense not only was a "but for" cause of his injury, but was the proximate cause as well. Proximate cause for RICO purposes, we made clear, should be evaluated in light of its common-law foundations; proximate cause thus requires some direct relation between the injury asserted and the injurious conduct alleged. A link that is "too remote," "purely contingent," or "indirect" is insufficient.

Browning, 955 F.Supp.2d at 916 (quoting *Hemi Group*, 559 U.S. at 9); *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (predicate act must "[lead] directly to the plaintiff's injuries.").

Numerous courts have found that there simply is no direct link between purported violations of immigration paperwork requirements and any depressed wages allegedly caused by the hiring of illegal immigrants – including cases involving Plaintiff's lead counsel. *See Simpson*, 744 F.3d at 712-15 (same counsel); *Walters II*, 684 F.3d at 444-45 (same counsel); *Varela*, 773 F.3d at 710-11; *Nichols*, 608 F.Supp.2d at 542. As succinctly put by the Fourth Circuit:

> [I]t is not the violation of the false attestation predicate that has caused the harm suffered by the plaintiffs. Rather, the fraudulent use of identification documents and the false attestations placed on the I–9 forms are fundamentally crimes against the government of the United States, and such actions do not directly impact the plaintiffs' wage levels. Although false attestations made by the hiring clerks are one step in a chain of events that ultimately may have resulted in the employment of unauthorized aliens by [the employer], the plaintiffs have not demonstrated that the false attestations themselves have had a direct negative impact on the plaintiffs' wages, or on any other aspect of their compensation.

Walters II, 684 F.3d at 444. The Fourth Circuit concluded in dismissing the case that "the false attestation violation cannot be a proximate cause of the plaintiffs' injury, because there is no direct relationship between the injury asserted and the predicate act alleged." *Id.* (citation omitted).

The same result is mandated here. The FAC addresses proximate cause in one boilerplate paragraph – "O'Shea has been directly and proximately harmed by the RICO violations because his wages as an IPC hourly worker were depressed below what his wages would otherwise have been had the Defendants not violated §1546 in the manner described herein, allowing them to hire large numbers of illegal alien workers to work at IPC." FAC, ¶68. This "'[t]hreadbare recital[] of [an] element[] of a cause of action" is "not entitled to the assumption of truth." *Browning*, 955 F.Supp.2d at 907 (citation omitted). Even if Plaintiff pled more details, dismissal would still be required because the connection between his purported injury and any violation of §1546 is too attenuated as a legal matter to meet the Supreme Court's directness requirement – as a litany of cases confirms. *Varela*, 773 F.3d at 710-11; *Simpson*, 744 F.3d at 712-15; *Walters II*, 684 F.3d at 444-45; *Nichols*, 608 F.Supp.2d at 542.

Plaintiff has neither pled a plausible allegation that he suffered an "injury" to his business or property nor that any act of racketeering committed by the Defendants proximately caused him a concrete financial loss. Accordingly, his FAC must be dismissed.

V. CONCLUSION

Plaintiff's civil RICO claim, and his entire FAC, fails to state a claim upon which relief can be granted. Therefore, it should be dismissed. And because Plaintiff has already amended his complaint once, that dismissal should be with prejudice. *James Cape & Sons Co. v. PCC Const. Co.*, 453 F.3d 396, 400-01 (7th Cir. 2006); *Phillips v. Double Down Interactive LLC*, 2016 WL 1169522, *9 (N.D. Ill. March 25, 2016).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically filed this 14th day of June, 2016. Notice of this filing will be sent to all parties listed below by operation of the Court's electronic filing system which the parties may access through the Court's system.

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